

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: JESSE J. WILLIAMS, LINDSAY M. ULMAN, AND ERIC J. HANSEN

For: MANUAL SPRAY CLEANER

Serial No.: 10604,780 Examiner: Lorna M. Douyon

Filed: 08/15/2003 Art Unit: 1751

Docket: 71189-1501

DECLARATION UNDER 37 C.F.R. § 1.132 OF MONTFORT A. JOHNSEN

Commissioner for Patents
Washington, DC 20231

Sir:

Montfort A. Johnsen declares that:

1. I am a citizen of the United States and a resident of Danville, Illinois.

2. I was awarded B.S. Chemistry, Denver University in 1948, an M.S. Inorganic Chemistry from University of Colorado in 1949, and completed postgraduate work at in chemistry at the University of Illinois in 1952.

3. I have worked continuously in the aerosol industry in a scientific capacity since 1953. I presently serve as a consultant for a number of companies including the Procter & Gamble Co., Colgate-Palmolive Co., E.I. duPont de Nemours & Company, Inc., the S.C. Johnson & Son Inc. Co., the Schering Plough Corporation, and Reckitt Benckiser Inc. household products. My Curriculum Vitae is attached hereto.

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4. As a result of my education and over 50 years experience in the aerosol industry, I believe that I am qualified as an expert in the aerosol industry in general and with respect to the subject matter of the above identified patent application.

5. In the course of my normal consulting work several years ago, I worked as a consultant for BISSELL Homecare Inc. in the development of a two-part aerosol container for dispensing a detergent and an oxidizing agent simultaneously from two separate containers which appears to be the subject matter of the above-identified patent application. I believe that this has been commercialized by BISSELL Homecare, Inc.

6. In the course of my preparation for this declaration, I studied the above-identified patent application, the rejected claims in the application, the Kenkare et al. U.S. Patent No. 3,722,752 and the Lauwers et al. U.S. Patent No. 6,021,926, and the Examiner's final rejection of the claims over the cited prior art references.

7. In its most basic terms, the invention which is the subject of the rejected claims in the above-identified patent application relates to a manual spray cleaner for removing dirt and stains that includes an aerosol container that has an oxidizing composition, a propellant mixed with the peroxide composition to pressurize the oxidizing composition, wherein the aerosol container is formed from a plain or uncoated aluminum and the dispensing assembly is made from materials that are inert or resistant to the oxidizing composition. The preferred claimed oxidizing composition is hydrogen peroxide composition.

8. It is my understanding that claims to this invention have been rejected as unpatentable over the Kenkare et al. U.S. Patent No. 3,722,752 (Kenkare et al. '752) in view of the Lauwers et al. U.S. Patent No. 6,021,926 (Lauwers et al. '926).

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9. The Kenkare et al. '752 patent discloses a technology which was known since before 1960, although the first commercial product was launched by Gillette in 1967. In this technology, hydrogen peroxide (9.5% in water), contained in a polyethylene tube, was used to chemically react with any of a variety of identified reducing agents to produce other chemicals plus heat, typically in a shaving composition. The typical reducing agent was sodium thiosulfate. In addition, various catalysts, such as molybdates, can be used to accelerate the generation of heat. In short, the Kenkare et al. '752 patent teaches the use of two or more reducing agents with hydrogen peroxide for the purpose of producing heat in a shaving composition.

10. The Lauwers et al. '926 reference relates to an aerosol dispenser containing an extremely concentrated (high viscosity) detergent mixture, designed to be dispensed in a washing machine by the use of a non-flammable propellant. Hydrogen peroxide is not needed to provide the benefits of this formulation in the package. Hydrogen peroxide is not listed in any of the cited examples, nor is it cited in any of the claims. Hydrogen peroxide is briefly mentioned (column 10, line 11), merely as one of the group of oxidants that might react with peroxidase enzymes to do "solution bleaching." This particular technology is well known, but very rarely used, since the hydrogen peroxide is so prone to react with various other detergent ingredients and self-destruct in that process. In the examples presented, if hydrogen peroxide were to have been included, it would slowly react with such things as monoethanolamine and the perfumes, to the overall detriment of the formulation. The hydrogen peroxide (and its siblings) are included in the Lauwers et al. '926 disclosure in a very long list of possible ingredients perhaps to increase the scope of the patent but not otherwise for any appropriate benefit and would militate against the purpose of the Lauwers et al. '926 invention.

11. Lauwers et al. '926 further states that the aerosol package may be made from any material, preferably aluminum, tin plate, plastics including polyethylene terephthalate (PET), oriented polypropylene (OPP), polyethylene (PE) or polyamide and including mixtures, laminates and other combinations of these. Lauwers et al. '926 further discloses in column 3, line

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33, that the metal can be made from tin steel plate or other metals such as aluminum. Further, the interior surface of the metal containers are preferably laminated with a plastic material or coated with lacquer or with a varnish in order to protect the interior surface of the container from corrosion.

12. The compositions of the Kenkare et al. '752 and the Lauwers et al. '926 composition are radically different aerosol products. The Lauwers et al. '926 washing machine detergent mixture is far different than the self heating cosmetic composition of the Kenkare et al. '752 reference. To the extent that any minor amount of hydrogen peroxide was used in the Lauwers et al. '926 composition, a wide variety of container packages could likely be used. However, it is unlikely that any uncoated aluminum aerosol container would be used because the aerosol industry simply doesn't use uncoated aluminum in aerosol containers. As I read the disclosure in column 3, lines 26-44, there is no teaching to one skilled in the aerosol industry that a bare or uncoated aluminum aerosol container could be used to package the contents of the Lauwers et al. '926 composition, even in the event that an incidental amount of hydrogen peroxide was included in the composition. As stated above, hydrogen peroxide would not likely be used by a person having ordinary skill in the aerosol container art with the composition of Lauwers et al. '926 because of its deleterious effect on the functionality of that composition.

13. Further, the peroxide composition of the Kenkare et al. '752 reference has special problems which are not present in the composition of the Lauwers et al. '926 reference. For example, hydrogen peroxide as an oxidant in the Kenkare et al. '752 reference must be kept separate from the shaving cream or other cosmetics because it will react, and is intended to react with the specific chemical reducing compounds. Thus, the hydrogen peroxide solution must be kept separate from the cosmetic compositions because the hydrogen peroxide is intended to react when the two are mixed. Therefore, based on my background and experience in the aerosol field, there is no teaching in either of the Kenkare et al. '752 or the Lauwers et al. '926 references of the use of a bare aluminum aerosol container to package a hydrogen peroxide cleaning composition.

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14. Furthermore, from my experience in the field of aerosol containers over the past 50 years, I have been very familiar with the kinds of compositions that are disclosed in the Kenkare et al. '752 and the Lauwers et al. '926 references, as well as many other diverse aerosol compositions. In my judgment, it is not likely that anyone would package any of these aerosol compositions in a bare aluminum container because of the difficulties of manufacturing the aluminum containers from uncoated aluminum and the high probability of corrosion. Further there is no reason to do so because the coated aluminum containers work quite well with all of these aerosol compositions.

15. From my prior consulting work the BISSELL Homecare, I am aware that BISSELL overcame major challenges in developing of the cleaning compositions which are the subject of the above-identified BISSELL patent application. One of the major problems was the ability to package the hydrogen peroxide composition in an aerosol container of any sort. BISSELL scientists discovered, quite surprisingly, that the hydrogen peroxide composition could be packaged in a bare aluminum container, notwithstanding the industry's reluctance to do so and yet could not be packaged in a coated aluminum container because of contamination from the coating with the aerosol propellant. Insofar as I know, the BISSELL hydrogen peroxide composition is the only hydrogen peroxide aerosol product in the country, and furthermore the only aerosol product that is packaged in a bare or uncoated aluminum can, rather than lined. It was only with great difficulty that BISSELL was able to persuade an aluminum aerosol can supplier to produce cans which were uncoated, that is, devoid of the usual organic linings. After a lengthy testing period, it was firmly established that the hydrogen peroxide composition was stable in the plain or uncoated interior aluminum cans but was not stable in coated aluminum cans. Insofar as I am aware, there are no technical problems with the commercial products which have been made according to the subject matter of the above-identified patent application.

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16. In summary, based on my knowledge, and for the reasons as set forth above, I do not believe that the BISSELL invention as set forth above is in any way related to the Kenkare et al. '752 or the Lauwers et al. '926 references. Further, in considering both of these references as a person who has much more than ordinary skill in the art, I do not believe that the BISSELL invention as I have set forth above, namely the packaging of a hydrogen peroxide aerosol composition in an aerosol container formed of a bare aluminum material, would be obvious to a person of ordinary skill in the aerosol packaging art from the combined teachings of these two references.

17. I hereby declare that all statements made herein of my own knowledge are true and that all statements made in information and belief are believed to be true; and further that these statements were made with the knowledge that willful thought statements in the like so made are punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States code and at such willful thought statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 13-oct-2006

By Montfort A. Johnsen
Montfort A. Johnsen

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RESUME

MONTFORT A. JOHNSEN

SEP 11 2006

MONTFORT A. JOHNSEN was born in Brooklyn, NY. He served in the U.S. Navy as an Ensign during World War II, after which he completed his B.S. in Chemistry at Denver University in 1948, and his M.S. in Inorganic Chemistry at the University of Colorado in 1950. He completed his post-graduate work at the University of Illinois in 1952 and joined the staff as an Instructor at the University of Illinois.

In late 1953 he entered the aerosol industry as a Group Leader in the Research Department of the Continental Filling Corporation, Danville, IL. He was promoted to Director of Research in 1954. He left the firm in late 1955 to become a founder of the Peterson Filling & Packaging Co., also at Danville, IL, where he was appointed Director of Research, Product Development and Quality Assurance.

He became Vice President - R&D in 1962 and was elected to the Board of Directors. Added responsibilities included direction of safety and chemical compounding activities. In 1964 the firm was purchased by CPC International, Inc. During the 1970s a network of four USA and four foreign aerosol filling plants was established and Montfort was placed in charge of all technical activities for the domestic facilities and in technical liaison with those abroad. During early 1987, when the firm (now known as Peterson/Puritan, Inc.) was in the process of being acquired by Hi-Port Industries (Texas) he decided to retire and do consulting work. At the request of Hi-Port he retained his offices and consulted for them on a part-time basis. CCL Industries, Inc. (Toronto) purchased the firm in 1990 and later sold it to KIK Custom Products, Inc. in 2005. The consulting arrangement continued unchanged, through these transitions.

In other activities Montfort served on the Board of the (now) Consumer Specialty Products Association (CSPA) for 11 years and also was elected Chairman of the Board in 1981. (The CSPA is the world's premier aerosol association, with about 300 corporate members.) He has authored all or part of eight technical books on aerosols, the most notable being The Aerosol Handbook (Editions I and II) and The Aerosol Guide. He has written several hundred articles for trade journals and is currently the Technical Editor for Spray Technology & Marketing and two other magazines. He has lectured hundreds of times in over a dozen countries. In this connection he directs highly successful 3 and 4-day seminars for both the CSPA and The Center for Professional Advancement. Recently he received the CSPA's most prestigious award (The Alderdice Award) and the Southern Aerosol Technical Association's (SATA) "Man-of-the-Year" award for outstanding service to the aerosol industry.

When in Danville, IL he generally works in offices in his home until about 1:30 p.m., and then at the KIK Custom Products, Inc. (Danville Plant) until about 6:00 p.m. doing projects, participating in meetings, using the library, the laboratory, and so forth. Major clients include:

The United Nations
The Procter & Gamble Company
The Colgate Palmolive Company
The Upjohn Company
Bradley Pharmaceuticals, Inc.

The U.S. EPA and their general contractors
E.I. DuPont de Nemours & Company, Inc.
S.C. Johnson & Son, Inc.
Schering-Plough, Inc.
Reckitt & Benkizer Household Products, Inc.

Services include technical, environmental, regulatory and safety-oriented advice, technical assistance and witness in lawsuits, problem solving, product formulation and packaging, and recommendations for aerosol line installations, controls and improvements. For communications: Phone: 217-446-1909, FAX: 217-442-0902, Email: Montyjohnsen@aol.com and (for color and attachments) Email: smitzlaff@kikcorp.com.